IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 792 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI DALAJI GODAD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 792 of 1991

MR AJ PATEL for Petitioner No. 1

MR BM GUPTA for Petitioner No. 1

MR CB GUPTA for Petitioner No. 1

MR KOGJE, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 30/01/2003

ORAL JUDGEMENT

1. The appellant - accused Rameshbhai Dalaji Godad has challenged in this Appeal the impugned Judgment and order of conviction and sentence passed by the learned Addl. Sessions Judge, Sabar Kantha at Himatnagar on 14.10.1991 in Sessions Case No.38 of 1991 whereby the

learned trial Judge held the Appellant - accused guilty for the offences punishable u/ss. 498-A and 306 I.P.Code and sentenced him to suffer 2 years S.I. and to pay fine of Rs.200/- i/d 10 days imprisonment for the offence u/s.306 I.P.Code and one year S.I. and to pay fine of Rs.100/- i/d to under-go 5 days' imprisonment for the offence u/s.498-A I.P.Code. However, both the substantive sentences were ordered to run concurrently.

2. The appellant - accused belongs to scheduled tribe of Adivasi. He was young man of hardly 22 years old and doing the labour work when the incident took place on 15.4.1991. Prior to the date of incident i.e. 15.4.1991 he got married with one "Manjula", hardly aged 18 years. She committed suicide by hanging herself at her in-laws house on 15.4.1991 at about 11.30 p.m. because of the mental cruelty meted out to her by her husband. It is the case of the prosecution that her husband was having doubt about her character, therefore, he was talking less with her and because of that she committed suicide. Thus, the appellant - accused committed an offence u/s.498-A and Section 306 I.P.Code.

3. It is interesting to note that the information about the incident was given by none-else but the accused himself, on the same day i.e. on 15.4.1991 before Vijaynagar Police station (Exh.18). It is stated by the accused in his Application Ex.18 that he was staying at Vijaynagar with his wife Manjula as well as brother and sister. He got married with Manjula, daughter of Lalji Kana of Chitariya. After his marriage parents of his wife took her to their house. Thereafter, he had heard from the people that his wife had run away with some one, therefore, he had not called her back. He has further stated that just one month before Diwali his in-laws brought his wife at his house and since then she was staying there. Because of the aforesaid reason he had no cordial relation with his wife and both of them were hardly talking with each other. His father took away his mother at Himatnagar since last 5 to 6 days for operation. On that day his wife was at home and he came to bus stand for doing money order. There, his cousin Babulal came and told him that his wife committed suicide by hanging herself in the house. Thereupon, he went there and informed about the incident to the village people and also sent person to inform about the same to his parents and also at Chitaria. He, therefore, lodged complaint before the Police and requested to investigate that case.

4. Laljibhai Kanjibhai, father of deceased Manjula

lodged F.I.R. on the same day i.e. on 15.4.1991 about the incident against the appellant - accused. However, Police initially registered the case against the accused only u/s.498-A I.P.Code and later on added Section 306 I.P.Code on 23.4.1991. Initially the complaint was given marked 5/1, but the same was treated as F.I.R. by the learned Judge and given Ex.22. It is stated in the complaint by the complainant Laljibhai that one year before the incident he got married his daughter Manjula with Ramesh, son of Dalaji Mongaji. After one week of marriage they brought Manjula at their village, but thereafter nobody came from the in-laws place of Manjula to take her. Therefore, he inquired from Dalaji Mongaji, father of Ramesh, that why they were not coming to take Manjula. Thereupon, Dalaji Mangaji and his son Ramesh informed him that his daughter had eloped from his house and he had brought her back, therefore, they do not want her. Three months thereafter Thavraji Monghaji, Dalaji Mongaji and Kalaji Mongaji, etc. came from Vijaynagar and inquired from him about the fact as to whether his daughter had run away with someone or not. Thereupon, he and his family members told them that it was false and that his daughter had not run away with anyone. Thereupon Dalaji, father of accused Ramesh and Thavdaji Mongaji told him that Ramesh refused to accept his daughter, but they can bring Manjula and there would not be any problem to his daughter. They will look after it. Thereafter, after a period of 4 months of the marriage he, his wife, Ratnaji Kalaji and Dhulaji Mangaji along with Laliben and Ramji Mavji went to Vijaynagar with his daughter Manjula and after staying there overnight they came back to their house.

5. He has further stated in his complaint that on that day he had gone to Himatnagar Civil Hospital as Laduben, mother-in-law of his daughter Manjula was operated, when he was at Hospital, at that time Dalaji Mangaji and Dhulaji Monghaji were present. At about 3.00 p.m. Kalaji Mongaji of Vijaynagar came to Himatnagar Civil Hospital and told him that at about 11.30 a.m. Manjula had committed suicide in house by hanging herself. Thereupon, he along with Dalaji Mongaji, Dhulaji Mongaji and Kalaji Mongaji hired jeep from Himatnagar and came to Vijaynagar along with other persons of his village. He had seen his daughter Manjula lying dead and hanged in the house. Thereafter Police did further investigation in the matter. He has further stated in his complaint that 15 days before the incident his daughter Manjula came to his house and told him and his wife that her husband Ramesh was not keeping any relation with her and keeping doubt and always telling

her to go away, but inspite of it her in-laws and brother-in-law were treating her well, therefore, she was staying there. Thus, his son-in-law Ramesh, by keeping doubt about the character of his daughter Manjula forced her to commit suicide by giving physical and mental torture.

6. Complainant Lalji Kanji, P.W. 2, Ex.10, was examined by the prosecution along with Dhulaji Mongaji, his cousin brother, P.W.4, Ex.12, his wife Alkhiben Laljibhai, P.W.3, Ex.11 and P.W.6 Babubhai Punjabhai Ex.16 on the point of cruelty, and P.W.5 Kanabhai Kohyaji Ex.13 and P.W.4 Dhulaji Mongaji, Ex.12 were examined as Panch witnesses. Head Constable Nagjibhai Jivaji, P.W.8, Ex.19 was examined who has produced the panchnama of scene of offence at Ex.14 and Inquest Panchnama at Ex.15. P.S.I. Hirabhai Muljibhai was examined as P.W.9, Ex.20.

7. Considering the evidence of the witnesses the learned trial Judge came to the conclusion that the prosecution has proved the charges against the accused for the offences u/s.498-A and 306 I.P.Code and accordingly convicted and sentenced the accused as stated above.

8. Lalji kanji, P.W. 2,Ex.10 has not at all stated in his evidence before the Court about the physical harassment by the accused Ramesh to his wife Manjula. As per his oral evidence before the Court after Manjula was brought back to their home, her in-laws were not coming to take her back. Therefore, he conveyed to Dalaji Mangaji, Thavraji Mongaji to take her. However, Thavraji Mongaji and accused Ramesh told that Manjula had gone away earlier, therefore, they do not want to keep her. Immediately thereafter he stated that Thavraji Mongaji, Dalaji Mongaji, Dhulaji came to call Manjula and assured him that nothing will happen to Manjula. They asked where Manjula had gone. As per his evidence Manjula stayed at his house at about 3 months, thereafter, he had gone to drop his daughter at her in-laws place along with Ratnaji Kanaji, his wife Alkhiben, Laliben, Ratnaji, etc. He has also stated in his evidence that 15 days before the date of incident his daughter had come to his house and told him that his father-in-law and brother-in-law were keeping her well, but her husband was not keeping her well and harassing her and keeping doubt that she had gone away with some one. Because of this mental torture and agony she committed suicide. In his cross-examination specific question was put to him that his daughter Manjula had illicit relation with one Kanti Natha and therefore her in-laws were not calling her.

The said suggestion was denied by him. It is interesting to note that in his cross examination he has stated that 15 days before the incident Manjula had come to his house and told him that she did not like to stay at her in-laws place. Thereupon he told her that she had to start liking to stay at her in-laws place. He had denied the suggestion that the accused had stopped spoken and does not speak more. He has also admitted the fact that for the first time he disclosed the fact before the Police that Manjula was harassed by her husband. Before that he had not stated anything to anyone. He has denied the suggestion that Dalaji Nigahu, Thavraji and others have never come to call Manjula. He had specifically denied the suggestion that his daughter ran away with Kanti Natha from his home. Most important aspect of the case is that he himself has admitted in his cross examination that the accused was also behaving well with him.

9. Alkhiben Laljibhai, P.W.3, Ex.11, mother of Manjula, stated in her evidence before the Court that accused Ramesh was beating her daughter which was not the case of the complainant Lalji Kanji. Rest of the story she has repeated what has been said by Lalji Kanji before the Court. Similar type of suggestion were put to her which were put to Lalji Kanji and they were denied. However, she has admitted the fact that Kanti Natha coming quit often to their house. She has to admit in her cross examination that she had not stated before the Police that her daughter Manjula that Ramesh will improve and everything will be alright. She also denied that Ramesh was not beating her daughter Manjula.

10. Dhulaji Mongaji, P.W.4, Ex.12, stated in his evidence before the Court that when Manjula came to Chitariya she told him that everything is well at her in-laws place and there is no problem from her in-laws except that she and her husband had no marital relation and her husband was not talking with her. In-laws of Manjula came once to call her, but thereafter they have not come. They had doubt that Manjula had run away with someone. In his cross examination he admitted that he had not stated before the Police about Manjula met him one week before the incident and told that her husband was not keeping marital relation and he is not talking with her. He had denied the suggestion that Manjula never wanted to stay at her in-laws place and she wanted to marry with Kanti Natha.

11. Babubhai Punjabhai, P.W.6, Ex.16, stated that father of Manjula told them that Manjula came 15 days before the incident at Chitariya and told that her

husband was giving mental and physical torture and that Manjula had run away with some one. In his cross examination he had denied the suggestion that because his father is Jamadar in Police and therefore he was trying to help the complainant and giving false evidence.

12. Thus, from the oral evidence of the aforesaid witnesses one thing is clear that all of them have said that because of the doubt having in the mind of the accused Ramesh that his wife had run away with some one he was not keeping good relation with his wife and he was not on talking terms and because of that she had to commit suicide. However, it has come out in the evidence of Kantibhai Kohyabhai, P.W.5, Ex.13 that he was knowing Kantibhai Nathubhai, who took away deceased Manjula with him for 2 to 3 days. He was examined as panch witness, but he was belonging to the village of the accused and therefore he had admitted this in his cross examination. It is interesting to note that after his aforesaid admission in the cross examination the Public Prosecutor has not sought any permission to declare him hostile.

13. All the aforesaid witnesses have consistently maintained, in their evidence, that after the marriage when they approached deceased deceased Manjula to their house nobody was coming from her in-laws place to take her back though more than a period of 3 months passed. Thavraji Moghaji, Dalaji Moghaji, Julaji Moghaji came to take Manjula at her in-laws house. However, the Police has not recorded the statement of any of those persons to corroborate these version of the witnesses that they had actually come to their place or not, which is clear from the admission made by P.S.I. Hirabhai Muljibhai, P.W.9, Ex.20, who has admitted in his cross examination that from the complaint he came to know that Thavraji, Dalaji, and other persons had gone to village of Manjula, but neither their statements were record nor they were shown as witnesses in the charge-sheet.

14. It is true that the marriage of deceased Manjula took place with accused Ramesh just before one year of the incident and therefore presumption has to be raised as to abetment of a married woman u/s.113-A against the accused. However, for that prosecution must lead positive evidence which is lacking in this case. There is no evidence on record to suggest that there was any abetment on the side of the appellant - accused to his wife for committing suicide. Even assuming for the sake of argument that the appellant - accused was having doubt in his mind about his wife eloped with some one for a particular period that itself would not be sufficient to

hold him guilty for the offences, either punishable u/ss.498-A or 306 I.P.C. In the instant case the allegations against the appellant - accused was that because he was having doubt in his mind, therefore, he was talking rarely with his wife. Such an act of accused cannot be considered to be an abetment. The appellant was poor Advisi, if at all he was having doubt about the character of his wife then there would have been allegation of beating or constantly taunting about the character of his wife, which may lead to a person to commit suicide, but that is not the case here. From the evidence Lalji, father of deceased Manjula, it is clear that deceased Manjula was not liking to stay at her in-laws place and against her will she was sent by her father by saying that at any cost she should start liking staying at her in-laws place. Perhaps, because of this also she might have committed suicide. The conduct of the accused is also required to be taken into consideration in this case. On the date of incident mother of accused was admitted in the hospital at Himatnagar. His father was at Himatnagar. Except he and his wife nobody was there at his house and when he had gone to bus stand for sending money order there nobody was at home except deceased Manjula and taking advantage of that fact that his wife committed suicide. As soon as he was informed about the same he immediately ran to the police station informed about the incident to the Police in writing, which is at Ex.18, wherein he has clearly stated that after his wife had gone to her father's place he came to know that she had ran away and therefore she was not brought back. When in-laws dropped his wife at his place then because of the aforesaid incident he was not having cordial relation with his wife and they were talking less with each other.

15. In view of the above it cannot be said that in this case the ingredient of Section 498-A or Section 306 I.P.C. were satisfied.

16. In view of the above, this Appeal is allowed and the impugned Judgment and order of conviction and sentenced passed by the learned Additional Sessions Judge, Sabarkantha at Himatnagar, convicting the appellant - accused for the offence u/ss.306 and 498-A I.P.Code and sentenced him to suffer 2 years S.I. and to pay fine of Rs.200/- i/d 10 days S.I. for the offence u/s.306 I.P.Code and 1 year S.I. and to pay fine of Rs.100/- i/d 5 days S.I. for the offence u/s.498-A I.P.Code is quashed and set aside. Fine, if paid, be refunded to the appellant - accused. The appellant accused is on bail and therefore bail bond of the

appellant - accused stands cancelled.

sd/-

Date : January 30, 2003 (B.J.Shethna, J.)

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